

SENATE AMENDMENTS

2nd Printing

By: Turner of Harris, et al.

H.B. No. 1318

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of counsel to represent certain youths
and indigent defendants.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 26.044, Code of Criminal Procedure, is
amended by amending Subsection (j) and adding Subsections (j-1) and
(j-2) to read as follows:

(j) A public defender's office may not accept an appointment
under Article 26.04(f) if:

(1) a conflict of interest exists that has not been
waived by the client;

(2) the public defender's office has insufficient
resources to provide adequate representation for the defendant;

(3) the public defender's office is incapable of
providing representation for the defendant in accordance with the
rules of professional conduct;

(4) the acceptance of the appointment would violate
the maximum allowable caseloads established at the public
defender's office; or

(5) [~~4~~] the public defender's office shows other
good cause for not accepting the appointment.

(j-1) On refusing an appointment under Subsection (j), a
chief public defender shall file with the court a written statement
that identifies any reason for refusing the appointment. The court

1 shall determine whether the chief public defender has demonstrated
2 adequate good cause for refusing the appointment and shall include
3 the statement with the papers in the case.

4 (j-2) A chief public defender may not be terminated,
5 removed, or sanctioned for refusing in good faith to accept an
6 appointment under Subsection (j).

7 SECTION 2. Section 51.101(a), Family Code, is amended to
8 read as follows:

9 (a) If an attorney is appointed under Section 54.01(b-1) or
10 (d) to represent a child at the initial detention hearing and the
11 child is detained, the attorney shall continue to represent the
12 child until the case is terminated, the family retains an attorney,
13 or a new attorney is appointed by the juvenile court. Release of
14 the child from detention does not terminate the attorney's
15 representation.

16 SECTION 3. Section 54.01, Family Code, is amended by adding
17 Subsection (b-1) and amending Subsection (d) to read as follows:

18 (b-1) Unless the court finds that the appointment of counsel
19 is not feasible due to exigent circumstances, the court shall
20 appoint counsel within a reasonable time before the first detention
21 hearing is held to represent the child at that hearing.

22 (d) A detention hearing may be held without the presence of
23 the child's parents if the court has been unable to locate them. If
24 no parent or guardian is present, the court shall appoint counsel or
25 a guardian ad litem for the child, subject to the requirements of
26 Subsection (b-1).

27 SECTION 4. Sections 51.101(a) and 54.01, Family Code, as

H.B. No. 1318

1 amended by this Act, apply only to a detention hearing that is held
2 for a child taken into custody on or after the effective date of
3 this Act.

4 SECTION 5. This Act takes effect September 1, 2013.

ADOPTED

MAY 17 2013

FLOOR AMENDMENT NO. 1

Leta Spaw
Secretary of the Senate

BY:

Rodney E.

Amend H.B. No. 1318 by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Effective September 1, 2014, Article 26.04(j), Code of Criminal Procedure, is amended to read as follows:

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record;
[and]

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and

(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal; and

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

(b) The change in law made by this section to Article 26.04(j), Code of Criminal Procedure, applies only to a criminal proceeding that commences on or after September 1, 2014. A criminal proceeding that commences before September 1, 2014, is governed by the law in effect when the proceeding commenced, and the former law is continued in effect for that purpose.

SECTION _____. Effective September 1, 2013, Section 79.036(a), Government Code, is amended to read as follows:

(a) Not ~~[In each county, not]~~ later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county ~~[the following information]~~ shall prepare ~~[be prepared]~~ and provide ~~[provided]~~ to the commission:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any plan or proposal submitted to the commissioners court under Article 26.044, Code of Criminal Procedure;

(3) any plan of operation submitted to the commissioners court under Article 26.047, Code of Criminal Procedure;

(4) any contract for indigent defense services required under rules adopted by the commission relating to a contract

defender program;

(5) [~~4~~2] any revisions to rules, [~~or~~] forms, plans, proposals, or contracts previously submitted under this section; or

(6) [~~3~~4] verification that rules, [~~and~~] forms, plans, proposals, or contracts previously submitted under this section still remain in effect.

SECTION _____. Effective September 1, 2014, Section 79.036, Government Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j)(4), Code of Criminal Procedure.

SECTION _____. (a) This section takes effect September 1, 2013.

(b) Not later than January 1, 2015, the Texas Indigent Defense Commission shall conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that, when the attorney's total caseload, including appointments made under Article 26.04, Code of Criminal Procedure, appointments made under Title 3, Family Code, and other work, is considered, allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation. The study must be based on relevant policies, performance guidelines, and best

practices.

(c) In conducting the study under Subsection (b) of this section, the commission shall consult with criminal defense attorneys, criminal defense attorney associations, the judiciary, and any other organization engaged in the development of criminal indigent defense policy that the commission considers appropriate.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 20, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1318 by Turner, Sylvester (Relating to the appointment of counsel to represent certain youths and indigent defendants.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would require the court, in certain circumstances, to appoint counsel within a reasonable time before the initial detention hearing is held to represent the child at that hearing. The bill would disallow a public defender from accepting an appointment under Article 26.04(f) if the acceptance of the appointment would violate the maximum allowable caseloads established at the public defender's office. A chief public defender would be required to file with the court any reason for refusing the appointment, and the chief public defender may not be terminated, removed, or sanctioned for refusing in good faith to accept an appointment.

The bill would amend the Code of Criminal Procedure to change certain reporting requirements to the Texas Indigent Defense Commission. The bill requires that certain counties submit information annually on certain attorney caseloads for the preceding fiscal year.

The Office of Court Administration (OCA) does not anticipate a significant fiscal impact to the state. No significant impact to juvenile correctional populations is expected from the bill.

Local Government Impact

According to the Texas Association of Counties, the counties of Brazoria, Kerr, and Rockwall reported that no significant fiscal impact is anticipated from sections of the bill related to the appointment of counsel. Regarding the sections of the bill related to reporting requirements, annual reports on attorney caseloads will have to be prepared by counties, resulting in an additional workload; however, fiscal impact to units of local government is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 644 Texas Juvenile Justice Department

LBB Staff: UP, ESi, KKR, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 14, 2013

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1318 by Turner, Sylvester (Relating to the appointment of counsel to represent certain youths and indigent defendants.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would require the court, in certain circumstances, to appoint counsel within a reasonable time before the initial detention hearing is held to represent the child at that hearing.

The bill would disallow a public defender from accepting an appointment under Article 26.04(f) if the acceptance of the appointment would violate the maximum allowable caseloads established at the public defender's office. A chief public defender would be required to file with the court any reason for refusing the appointment, and the chief public defender may not be terminated, removed, or sanctioned for refusing in good faith to accept an appointment.

The Office of Court Administration (OCA) does not anticipate a significant fiscal impact to the state. No significant impact to juvenile correctional populations is expected from the bill.

Local Government Impact

According to the Texas Association of Counties, the counties of Brazoria, Kerr, and Rockwall reported that no significant fiscal impact is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 644 Texas Juvenile Justice Department

LBB Staff: UP, ESi, KKR, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 25, 2013

TO: Honorable Tan Parker, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1318 by Turner, Sylvester (Relating to the appointment of counsel for a detention hearing for certain youths.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require the court to appoint counsel within a reasonable time before the initial detention hearing is held to represent the child at that hearing. The Office of Court Administration (OCA) does not anticipate a significant fiscal impact to the state. No significant impact to juvenile correctional populations is expected from the bill.

Local Government Impact

Some counties do not currently provide appointed counsel to children prior to their initial detention hearings; therefore, requiring that counsel be appointed will result in some additional costs to the counties. According to OCA, there were 31,002 juvenile detention hearings conducted statewide in fiscal year 2012. Assuming five percent these cases involved initial detention hearings without an attorney, there would be 1,550 more hearings with counsel. At an approximate cost of \$100 per detention hearing, potential costs would total \$155,000 statewide for county governments. This would not be a significant fiscal impact to counties.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 644 Texas Juvenile Justice Department

LBB Staff: UP, ESi, KKR, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 17, 2013

TO: Honorable Tan Parker, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1318 by Turner, Sylvester (Relating to the duration of a youth's detention following a detention hearing and the appointment of counsel for that hearing for certain youths.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would require the court to appoint counsel before the initial detention hearing is held to represent the child at that hearing if the child is unrepresented but qualifies for appointed counsel.

The Office of Court Administration (OCA) does not anticipate a significant fiscal impact to the state.

No significant impact to juvenile correctional populations is expected from the bill.

Local Government Impact

Some counties do not currently provide appointed counsel to children prior to their initial detention hearings; therefore, requiring that counsel be appointed will result in some additional costs to the counties. According to OCA, there were 31,002 juvenile detention hearings conducted statewide in fiscal year 2012. Assuming five percent these cases involved initial detention hearings without an attorney, there would be 1,550 more hearings with counsel. At an approximate cost of \$100 per detention hearing, potential costs would total \$155,000 statewide for county governments. This would not be a significant fiscal impact to counties.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 644 Texas Juvenile Justice Department

LBB Staff: UP, ESi, KKR, JPo

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

83RD LEGISLATIVE REGULAR SESSION

April 25, 2013

TO: Honorable Tan Parker, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1318 by Turner, Sylvester (Relating to the appointment of counsel for a detention hearing for certain youths.), **Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: UP, ESi

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

83RD LEGISLATIVE REGULAR SESSION

April 12, 2013

TO: Honorable Tan Parker, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1318 by Turner, Sylvester (Relating to the duration of a youth's detention following a detention hearing and the appointment of counsel for that hearing for certain youths.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: UP, ESi